Senate Committee on Environment and Public Works
Hearing Entitled, "*Evaluating the Federal Response to the Persistence and Impacts of PFAS Chemicals on our Environment*"
October 20, 2021
Questions for the Record for Assistant Administrator Radhika Fox

Chairman Carper:

1. The PFAS Roadmap anticipates the development of proposed Effluent Limitation Guidelines (ELGs) for two industry categories by the summer of 2023 and 2024 but did not include deadlines for the issuance of final ELGs. Further, the Roadmap anticipates a decision about whether to move forward with ELGs for three categories – electrical components, textiles, and landfills – by the end of 2022 based on detailed studies, and anticipates completing the data reviews for other categories which include leather tanning and finishing, plastics molding and forming, and paint formulation by the winter of 2023.
    a. Please provide addition detail regarding the process the agency will undertake to develop ELGs, including any deadlines.
    b. Does EPA need additional resources to accelerate the development of ELGs? If so, please describe.

    RESPONSE: Effluent Limitations Guidelines (ELGs) are a powerful tool to limit pollutants from industrial sources from entering the nation's waters. ELGs establish national technology-based regulatory limits on the level of specified pollutants in wastewater discharged into surface waters and into municipal sewage treatment facilities. EPA has been conducting a PFAS multi-industry study to inform the extent and nature of PFAS discharges. Based on this study, EPA is taking a proactive approach to restrict PFAS discharges from multiple industrial categories. EPA plans to make significant progress in its ELG regulatory work by the end of 2024. EPA has established timelines for action—whether it is data collection or rulemaking—on the nine industrial categories in the proposed PFAS Action Act of 2021, as well as an additional industrial category: landfills.

    EPA's ELG work is industry-specific and highly dependent on data necessary to characterize the facilities that make up the industry, the type and amount of pollutants being discharged, the treatment technologies available to reduce or eliminate pollutants, and the economic impact that requiring removal of pollutants consistent with the available technologies would have on the industry as a whole. For the industrial categories where EPA has announced it is revising ELGs due to PFAS – Organic Chemical Manufacturing and Metal Finishing/Electroplating – EPA is moving ahead quickly to acquire the data needed to fully understand the profile of the industry; the PFAS compounds made, used, and discharged; and the extent of those discharges.

    The schedules for final rulemakings for these two categories are dependent on what we learn about these industrial categories through EPA's data collection

and analysis. This limits EPA's ability to set more precise timelines until such data are gathered and fully analyzed. Through the rulemaking and the additional industrial category studies identified under the PFAS Roadmap, EPA intends to make significant progress toward closing these data gaps and then using the resulting data to make regulatory decisions.

EPA published its *Preliminary Effluent Guidelines Program Plan 15* in the Federal Register on September 14, 2021. EPA is currently reviewing public comments on the proposed plan in anticipation of publishing a final Program Plan 15 in 2022 that will further describe EPA's plans related to PFAS.

EPA will require, and anticipates allocating, additional resources to complete the ELG actions included in the PFAS Roadmap. The ELG program at EPA has declined in both staffing and extramural resources by almost 40 percent over the last ten years.

2. We appreciate the agency's efforts to accelerate the development of a drinking water standard for PFOA and PFOS. What steps does EPA plan to take to establish limits for other PFAS chemicals in drinking water?

   RESPONSE: **In addition to EPA's commitment to issue a proposed National Primary Drinking Water Regulation (NPDWR) for PFOA and PFOS in Fall 2022, and a final rule by Fall 2023, the Agency is also evaluating additional PFAS and considering regulatory actions to address groups of PFAS. Going forward, EPA will continue to analyze whether NPDWR revisions can improve public health protection for additional PFAS in drinking water.**

   In addition to EPA's commitment to move forward on these regulatory actions, EPA's PFAS Roadmap also commits EPA, going forward, to develop health advisories as the Agency completes toxicity assessments for additional PFAS.

3. According to recent analysis, thousands of industrial furnaces, incinerators or cement kilns across the country could unsuspectingly be burning the Pentagon's PFAS waste after it is blended into the fuel that is used to power their operations. According to DOD records, as much of 25 percent of DOD's legacy Aqueous Film Forming Foam (AFFF) is being sent to fuel blending facilities through this process instead of directly to a hazardous waste incinerator. What steps is EPA taking or planning to take to limit PFAS incineration via blended fuel?

   RESPONSE: **EPA would defer to the Department of Defense to characterize the current status of DOD's disposal of legacy AFFF.**

   To meet a requirement of the Fiscal Year 2020 National Defense Authorization Act (NDAA), EPA published interim guidance on destroying and disposing of PFAS and certain identified non-consumer PFAS-containing materials in December 2020 for public comment. It identifies three technologies that are commercially available to

either destroy or dispose of PFAS and PFAS-containing materials and outlines the significant uncertainties and information gaps that exist concerning the technologies' ability to destroy or dispose of PFAS while minimizing the migration of PFAS to the environment. The guidance also highlights research that is underway and planned to address some of these information gaps. Furthermore, the interim guidance identifies existing EPA tools, methods, and approaches to characterize and assess the risks to disproportionately impacted people of color and low-income communities living near likely PFAS destruction or disposal sites.

In the PFAS Roadmap, EPA committed to issuing updated guidance no later than the NDAA statutory deadline of December 2023. EPA's updated guidance will address the public comments and reflect newly published research results. Since the publication of the interim guidance, EPA and other agencies have been conducting relevant research on destruction and disposal technologies. EPA anticipates that additional research data will become available starting in 2022. EPA will update the guidance when sufficient useful information is available and no later than the statutory deadline.

4. The latest agency guidance on PFAS disposal indicates that interim storage is currently the best option, given concerns related to disposal methods such as landfilling and incineration.
    a. How is EPA communicating that advice to industries and other entities that use PFAS?
    b. Is EPA planning to take steps to limit incineration while it continues its PFAS destruction research?

    RESPONSE: By publishing the interim guidance, EPA took a significant step toward educating industry and the public on available destruction and disposal technologies as well as their significant uncertainties and information gaps. As noted, EPA's interim guidance highlighted that while not a destruction or disposal method, interim storage may be an option if the immediate destruction or disposal of PFAS and PFAS-containing materials is not imperative. In general, interim storage could be utilized until research reduces the uncertainties associated with other options. However, EPA understands that interim storage may not be an option for some entities due to limitations. EPA's PFAS Roadmap includes specific commitments to issue updated destruction and disposal guidance; to build the technical foundation to address PFAS air emissions; to develop and validate methods to detect and measure PFAS in the environment; and to evaluate and develop technologies for reducing PFAS in the environment.

Senator Merkley:

1. The PFAS Roadmap discusses EPA's requirement to update its guidance on destroying and disposing PFAS waste per the 2020 NDAA. It also requires that EPA revise this

guidance every 3 years. In December of 2020, EPA published it first interim guidance on PFAS disposal. The guidance notes that three technologies that are currently available to destroy or dispose of PFAS. However, the PFAS Roadmap also points out that [quote] "significant uncertainties and information gaps…exist concerning the technologies' ability to destroy or dispose of PFAS while minimizing the migration of PFAS to the environment." Ms. Fox, what steps will EPA take between now and December 2023 to ensure that communities surrounding incinerators are not harmed by ongoing PFAS incineration?

a. Can you explain why EPA decided not to implement a rulemaking to ensure incineration of toxic PFAS waste is banned when we know polluters like the Department of Defense have been burning PFAS-containing waste, including firefighting foam?~~Please put your second question here, if you have one, and continue with this format for additional questions. Thank you.~~

RESPONSE: By publishing the interim guidance, EPA took a significant step toward educating industry and the public on available destruction and disposal technologies as well as their significant uncertainties and information gaps. As noted, EPA's interim guidance highlighted that while not a destruction or disposal method, interim storage may be an option if the immediate destruction or disposal of PFAS and PFAS-containing materials is not imperative. In general, interim storage could be utilized until research reduces the uncertainties associated with other options.

EPA's PFAS Roadmap includes specific commitments to issue updated destruction and disposal guidance; to build the technical foundation to address PFAS air emissions; to develop and validate methods to detect and measure PFAS in the environment; and to evaluate and develop technologies for reducing PFAS in the environment.

2. PFAS has been detected at airports and military sites in my home state of Oregon. The suspected source of this PFAS if firefighting foam. Ms. Fox, as you know, firefighting foam made with PFAS is among the major sources of PFAS pollution. On Monday, the White House released a press released on PFAS action that states that the "FAA and DOD are working to find a PFAS-free firefighting foam alternative." Ms. Fox, is the EPA working with these agencies to find an alternative to PFAS-free fighting foam?

a. If so, can you please provide an update on this work?

RESPONSE: Congress has provided DOD and FAA with statutory directives related to developing PFAS-free firefighting foam. EPA is working with these agencies to identify ways for EPA to support their efforts, including through coordination of ongoing research and development activities.

3. As the Senate sponsor of the Break Free from Plastic Pollution Act, I am greatly concerned about the chemicals present in plastic products – and how they impact public health and the environment. In March of 2021, EPA released a study which found PFAS in some fluorinated containers of high-density polyethylene. According to E&E News this material is "widely used in food packaging because it can easily seal out moisture and other temperature changes. The packaging is generally used during the manufacturing process to hold large quantities of ingredients like oils or flavorings." Since then, the Food and Drug Administration has warned industry that only certain fluorinated polyethylene containers are approved for contact with food. Ms. Fox, can you elaborate on these EPA findings?

    a. What steps is EPA taking to work with FDA to address the use of these plastics containers?

    RESPONSE: EPA is aware that many companies are using fluorinated High Density Polyethylene (HDPE) containers to store and distribute pesticides and other products. EPA has been working with the Food and Drug Administration, the U.S. Department of Agriculture, and industry and trade organizations to raise awareness of this emerging issue and discuss expectations of product stewardship. For example, EPA has corresponded with the Ag Container Recycling Council, the American Chemistry Council, Crop Life America, the Household & Commercial Products Association, and the National Pest Management Association. In addition, on January 14, 2021, EPA issued a TSCA subpoena to a company that fluorinates the containers to learn more about the fluorination process used on the HDPE containers. On March 5, 2021, EPA also released testing data showing PFAS contamination from the fluorinated HDPE containers used to store and transport a mosquito control pesticide product. While EPA is still early in its investigation, the agency will use all available regulatory and non-regulatory tools within EPA's authority to determine the scope of this issue and its potential impact on human health and the environment and will continue to coordinate with other agencies and organizations on matters outside EPA's jurisdiction.

Senator Markey:

1. In the Environmental Protection Agency's (EPA) PFAS Action Plan, which was issued in 2019, the agency stated that it would partner with Environmental Council of the States to build an interactive, publicly accessible map of potential PFAS sources and occurrence. The EPA anticipated that the map would be completed and implemented in 2019. What is the status of this endeavor?

    RESPONSE: As highlighted in EPA's PFAS Roadmap, the Agency remains committed to educating the public about the risks of PFAS. EPA continues work to develop different approaches for identifying and mapping potential PFAS sources

and occurrence. In the Biden-Harris Administration, EPA has renewed its partnership with ECOS and continues to discuss opportunities—both within EPA and with ECOS—to increase available resources on PFAS contamination. EPA has recently publicly released data regarding PFAS detections and possible sources through its FOIA Online database.

2. Given the Food and Drug Administration's detection of PFAS in our food supply, will the EPA consider additional interagency plans for PFAS remediation?

   RESPONSE: Coordination with FDA and other agencies will be critical to combatting PFAS pollution. EPA will work with other federal agencies through the newly formed Interagency Policy Committee on PFAS, which is led by the White House Council on Environmental Quality, to coordinate and help develop new policy strategies to support research, remediation, and removal of PFAS in communities across the country.

3. The EPA has identified more than 120,000 facilities across the country that may be handling PFAS, including about 2,500 in Massachusetts. What is the EPA doing to identify if PFAS is present at these sites and how will the EPA make the American public aware of these potentially harmful facilities?

   RESPONSE: Harmful PFAS are an urgent public health and environmental issue facing communities across the United States, and EPA's PFAS Roadmap seeks to broaden and accelerate the cleanup of PFAS contamination to protect human health and ecological systems. Many communities and ecosystems are continuously exposed to PFAS in soil, surface water, groundwater, and air. Areas can be exposed due to their proximity to industrial sites, airports, military bases, land where biosolids containing PFAS have been applied, and other sites where PFAS have been produced or used and disposed of for specific and repeated purposes.

   When EPA becomes aware of a situation that poses a serious threat to human health or the environment, the Agency will take appropriate action. For other sites where contamination may have occurred, the presence of certain PFAS in these environments necessitates coordinated action to understand what specific PFAS have been released, locations where they are found, where they may be transported through air, soil, and water in the future, and what remediation is necessary. EPA will seek to hold polluters and other responsible parties accountable for their actions, ensuring that they assume responsibility for remediation efforts and prevent any future releases.

   With respect to the facility numbers included in your question, the total number of facilities identified by these datasets includes some facilities where PFAS has been detected by states and other entities, but also includes many facilities that are in one of the datasets solely because they are part of an industry category that generally handles PFAS. Such facilities may be handling PFAS because of their industrial

categorization, but EPA does not have specific evidence of potential contamination for many of these facilities.

4. Will the EPA consider strengthening regulatory or compliance requirements beyond the establishment of a voluntary stewardship program to mandate that all industrial sources of PFAS reduce their emissions into the environment?

   RESPONSE: Yes. EPA will use its authorities to impose appropriate limitations on the introduction of new unsafe PFAS into commerce and will, as appropriate, use all available regulatory and permitting authorities to limit emissions and discharges from industrial facilities. However, reducing PFAS exposure through regulatory means can take time to develop, finalize, and implement. Moreover, current PFAS regulatory efforts do not extend to all of the PFAS currently in commerce in the United States. As a companion to other efforts described in the Roadmap, EPA will establish a voluntary stewardship program challenging industry to reduce overall releases of PFAS into the environment. The program, which will not supplant industry's regulatory or compliance requirements, will call on industry to go beyond those requirements by reporting all PFAS releases in order to establish a baseline and then continuing to report to measure progress in reducing releases over time. EPA will validate industry efforts to meet reduction targets and timelines.

5. Regarding the issue of PFAS in firefighting foams used in aviation, will the EPA issue a comprehensive list of products that may contain PFAS? Concurrently, will the EPA issue performance standards for PFAS-free alternatives to enable a rapid transition away from such products?

   RESPONSE: As part of the PFAS Roadmap, EPA is not currently planning to develop a comprehensive list of PFAS-containing products or performance standards for PFAS-free products. However, EPA looks forward to engaging regularly with communities experiencing PFAS contamination, co-regulators, industry, environmental groups, community leaders, and other stakeholders, to clearly communicate its actions and to stay abreast of evolving needs.

Ranking Member Capito:

1. In response to a question from Senator Carper, you stated "as PFAS legislation moves, we would love to be in discussion with Congress about additional authorities, statutory authorities that might enable EPA to go faster." What additional authorities does EPA need, that it does not already have, to address PFAS?

   RESPONSE: My remarks to Senator Carper on this point were meant to highlight that there are areas in which Congressional action can be a much faster approach than an EPA rulemaking, such as the rulemaking processes identified in the PFAS Roadmap under the Comprehensive Environmental Response, Compensation, and Liability Act, the Safe Drinking Water Act, or the Clean Air Act. EPA looks forward to opportunities

to share technical assistance with you and with Chairman Carper on how legislation could further build upon the commitments included in the PFAS Roadmap.

2. Various bills proposed in Congress have defined PFAS as "a perfluoroalkyl or polyfluoroalkyl substance with at least one fully fluorinated carbon atom." This definition has been described as too broad because it captures products that do not include PFAS, such as lithium ion batteries. In EPA's proposed rule for TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for PFAS and the Draft Fifth Contaminant Candidate List (CCL) 5, EPA uses a structural definition of PFAS that "includes per- and polyfluorinated substances that structurally contain the unit R-(CF2)- C(F)(R′)R″. Both the CF2 and CF moieties are saturated carbons and none of the R groups (R, R′ or R″) can be hydrogen." Can you explain the difference between the definition used in past legislation and the structural definition EPA is using and why EPA prefers the structural definition?

   <u>RESPONSE</u>: The definition in various legislative proposals you reference would define PFAS using the recently revised definition provided in the OECD document, "Reconciling Terminology of the Universe of Per- and Polyfluoroalkyl Substances: Recommendations and Practical Guidance," and is broader than the definition cited, for example, in EPA's TSCA 8(a)(7) proposed rule. OECD has explained that the definition does not inform whether a substance is potentially harmful, only that it shares the same common trait for having one fully fluorinated carbon atom.

   The EPA working definition you highlight has been used by EPA's Office of Pollution Prevention and Toxics (OPPT), which administers the Toxic Substances Control Act (TSCA). This working definition identifies chemicals with at least two adjacent carbon atoms, where one carbon is fully fluorinated and the other is at least partially fluorinated. The EPA/OPPT working definition is focused on PFAS likely to be present in the environment, especially water, thereby focusing data collection on PFAS with greater potential for exposures to people/environment and by extension more potential to present risks. This working definition provides focus on PFAS of concern based on their persistence and potential for presence in the environment and human exposure.

   For example, chemicals with (-CF2-) that are not (-CF3) are expected to degrade in the environment and most substances with only one terminal carbon (-CF3) are expected to degrade to trifluoroacetic acid, which is a well-studied substance.

   In the context of the TSCA 8(a)(7) rule, EPA is evaluating the potential impact of the OECD definition on the scope of the rule.

3. Is EPA working on a uniform Agency-wide definition of PFAS?

   <u>RESPONSE</u>: At this time, EPA is not developing an Agency-wide definition of PFAS.

4. If EPA does not develop an Agency-wide definition of PFAS, how will EPA decide which definition to use in a given Agency action?

RESPONSE: The risks posed by PFAS demand that EPA attack the problem on multiple fronts at the same time, and EPA must leverage the full range of statutory authorities to confront the human health and ecological risks of PFAS. As EPA takes action on PFAS under a particular statutory authority, EPA will evaluate the best-available scientific information as well as the specific statutory context when determining the scope of its action.

5. Now that the *PFAS Strategic Roadmap* has been released, can you explain what the role of the EPA Council on PFAS will be moving forward and the specific processes the Council will utilize to share data and information across the Agency, with Congress, and with the public?

RESPONSE: EPA's Council on PFAS was established by Administrator Regan in April 2021 to collaborate on cross-cutting strategies; advance new science; develop coordinated policies, regulations, and communications; and engage with affected states, tribes, communities and stakeholders. Among the Council's primary initial responsibilities was to develop a multi-year strategy to deliver critical public health protections to the American public, which EPA released on October 18 as the PFAS Strategic Roadmap. Now that the Roadmap has been released, the PFAS Council will continue its collaborative, cross-agency work and will continue to tackle the additional areas outlined in the Administrator's April memo, such as to:

- **Continue close interagency coordination on regional specific and cross-media issues to assist states, tribes and local communities faced with significant and complex PFAS challenges;**
- **Work with all national program offices and regions to maximize the impact of the EPA's funding and financing programs to support cleanup of PFAS pollution, particularly in underserved communities; and to**
- **Expand engagement opportunities with federal, state, and tribal partners to ensure consistent communications, exchange information and identify collaborative solutions.**

6. In response to my February 17, 2021 letter to White House Chief of Staff Ronald Klain, EPA announced its intent to move forward with the "Final Regulatory Determinations for the Fourth Drinking Water Contaminant Candidate List," in which EPA finalized its determination to regulate both PFOS and PFOA under the Safe Drinking Water Act. This action by EPA was published in the *Federal Register* on March 3, 2021. What is the status of this regulatory process?

RESPONSE: EPA is moving forward to propose national primary drinking water regulations for PFOA and PFOS under the Safe Drinking Water Act. This December, EPA will begin consultation with EPA's Science Advisory Board on the science behind the impacts of PFOA and PFOS in drinking water. EPA expects the SAB will provide advice to EPA in late Spring 2022, followed by EPA proposing a National Primary Drinking Water Regulation in Fall 2022. At the same time, EPA is continuing the

process to collect information and data on additional PFAS chemicals, as outlined in the Safe Drinking Water Act.

7. The bipartisan American Innovation and Manufacturing (AIM) Act was enacted last December and directs EPA to address HFCs—a refrigerant that causes global warming—by phasing down their use in the United States by 85 percent over the next 15 years. The "next-generation" alternative to HFCs are called HFOs. Studies have shown the potential that HFOs could breakdown in the atmosphere to form TFA, a short-chain PFAS. Has EPA evaluated the PFAS risks of TFA and how any resultant PFAS could contaminate air, soil, or water?

   RESPONSE: Although implementation of the AIM Act is outside my responsibility as Assistant Administrator for Water, my work as co-chair of EPA's PFAS Council has highlighted the importance of close coordination across the Agency on PFAS and related issues. My colleagues in the Office of Air and Radiation have highlighted this issue for me and other members of EPA's PFAS Council, and I look forward to continuing this close coordination as EPA's implementation of the AIM Act and the PFAS Roadmap continue. My understanding from the Office of Air and Radiation is that current research indicates the environmental effects of TFA, or trifluoroacetic acid, produced from HFO breakdown are currently very small and are expected to remain negligible over the next decades, and are currently judged not to pose a risk to human health or to the environment.

8. Has the Office of Water or other offices within EPA provided input to the Office of Air and Radiation as it considers regulations and implements the AIM Act? If not, do you have plans to provide input?

   RESPONSE: Although implementation of the AIM Act is outside my responsibility as Assistant Administrator for Water, my work as co-chair of EPA's PFAS Council has highlighted the importance of close coordination across the Agency on PFAS and related issues. My colleagues in the Office of Air and Radiation have highlighted this issue for me and other members of EPA's PFAS Council, and I look forward to continuing this close coordination as EPA's implementation of the AIM Act and the PFAS Roadmap continue.

9. How do you intend to ensure water systems—particularly small, rural, and disadvantaged systems—can afford and comply with additional regulatory mandates on PFAS?

   RESPONSE: Ensuring that small, rural, and disadvantaged systems can comply with drinking water regulations is a priority for me, as is taking bold action to address PFAS contamination that has impacted these communities for too long. As part of developing a National Primary Drinking Water Regulation for PFOA and PFOS, EPA will prepare a health risk reduction and cost analysis that will evaluate these considerations. EPA also recently sought nominations from small entities that may be subject to its regulation to provide advice and recommendations to EPA about the potential impacts of the proposed rule on small entities.

10. In developing the *PFAS Strategic Roadmap*, did EPA consider the potential impacts and costs to small, rural, and disadvantaged systems before including each proposed regulatory action?

    RESPONSE: Harmful PFAS pollution is an urgent public health and environmental issue facing communities across the United States, and EPA's PFAS Strategic Roadmap lays out EPA's whole-of-agency approach to addressing PFAS and delivering needed protections for the American people. As EPA undertakes the specific regulatory and non-regulatory actions outlined in the Roadmap, EPA will consider such potential impacts, seeking to hold polluters accountable for the contamination they cause and ensuring disadvantaged communities equitably benefit from solutions.

11. EPA's *PFAS Strategic Roadmap* states that EPA is developing a Notice of Proposed Rulemaking (NPRM) to designate PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). On October 26, 2021, EPA announced that it will initiate two rulemakings to address PFAS contamination under the Resource Conservation and Recovery Act (RCRA). Why is EPA pursuing separate rulemakings under both CERCLA and RCRA when listing PFOA and PFOS as RCRA hazardous waste will also result in the designation of both chemicals as CERCLA hazardous substances?

    RESPONSE: In the PFAS Roadmap, EPA committed to leverage its full range of statutory authorities and to work with its partners to implement a multi-media approach to address PFAS contamination. Both CERCLA and RCRA provide important tools EPA can use to address PFAS contamination and EPA is committed to take action accordingly. Under the Biden-Harris Administration, EPA has restarted the rule development process for designating PFOA and PFOS as CERCLA hazardous substances, and in the PFAS Roadmap has committed the Agency to timelines for a proposed rule (Spring 2022) and final rule (Summer 2023). This rulemaking will help accelerate public health protections and quickly deliver results.

    In addition, EPA will initiate two additional actions. The first will be a rulemaking to clarify in our regulations that the RCRA Corrective Action Program has the authority to require investigation and cleanup for wastes that meet the statutory definition of hazardous waste, as defined under RCRA 1004(5). This modification would clarify that emerging contaminants such as PFAS can be addressed through RCRA Corrective Action. The second action the agency is initiating is the process to propose adding four PFAS chemicals as hazardous constituents in Appendix VIII under 40 CFR Part 261 (implementing 42 U.S.C. §6921), by evaluating data for these chemicals to establish a record to support a proposed rule. The four PFAS EPA will evaluate are PFOA, PFOS, perfluorobutane sulfonic acid (PFBS), and GenX chemicals.

12. In *California River Watch v. City of Vacaville*, the Ninth Circuit held that RCRA does not require that the "transporter" of the solid waste must also play some role in "discarding" the waste. Therefore, the Ninth Circuit held that "a triable issue exists as to whether the City is a

'past or present transporter' of solid waste" and that "[t]aken as true, [the] facts establish that the City is transporting solid waste through its water-distribution system." How is EPA considering this holding and its potential impact on local governments and municipal entities as the Agency pursues rulemakings to address PFAS contamination under RCRA?

RESPONSE: EPA announced on October 26 that the Agency will be initiating the rulemaking process for two additional actions to address PFAS under RCRA. As EPA moves ahead with these processes, EPA will ensure that its rulemaking efforts follow the law and follow the science.

13. Does EPA plan to convene a Small Business Advocacy Review panel prior to proposing to designate PFOA and PFOS as CERCLA hazardous substances?

RESPONSE: EPA is analyzing relevant potential impacts as part of the development of a proposed rulemaking.

14. Has EPA considered the regulatory impact and costs of disposal of carbon filters if they are regulated as hazardous materials under CERCLA due to saturation with PFAS?

RESPONSE: EPA is evaluating relevant potential impacts as part of developing a proposed rule to designate PFOA and PFOS as CERCLA hazardous substances.

15. Does EPA have the authority to provide a regulatory exemption from liability for public water and wastewater utilities if certain PFAS are listed as CERCLA hazardous substances?

RESPONSE: EPA is evaluating this issue as part of developing a proposed rule to designate PFOA and PFOS as CERCLA hazardous substances. EPA plans to propose a rule in Spring 2022 for public comment, and EPA looks forward to comments on these and other issues. EPA will ensure that its rulemaking efforts follow the law and follow the science.

16. CERCLA provides for joint and several legal liability and allows potentially responsible parties (PRPs) to sue other PRPs for cost recovery. Where public water and wastewater utilities treat drinking water and wastewater containing PFAS, do you believe those systems should be considered PRPs, and therefore be subject to cost recovery suits from PFAS manufacturers?

RESPONSE: EPA is evaluating this issue as part of developing a proposed rule to designate PFOA and PFOS as CERCLA hazardous substances. EPA plans to propose a rule in Spring 2022 for public comment, and EPA looks forward to comments on these and other issues. EPA will ensure that its rulemaking efforts follow the law and follow the science.

17. During the hearing, in response to the discussion of biosolids and PFAS, you stated that "there is a lot that we don't know around the human health and ecological effects of PFAS and biosolids" and that EPA would have a "risk assessment in place in the next couple of

years." In the *PFAS Strategic Roadmap*, EPA indicates plans to finalize a risk assessment in Winter 2024 for PFOA and PFOS in biosolids that will serve as the basis for determining whether regulation of PFOA and PFOS in biosolids is appropriate. Will you confirm that EPA will not issue any regulation impacting biosolids and PFAS before a final risk assessment has been published?

RESPONSE: In the PFAS Roadmap, EPA committed to leverage its full range of statutory authorities and to work with its partners to implement a multi-media approach to address PFAS contamination. The actions in the Roadmap will help accelerate public health protections and quickly deliver results. Completing a risk assessment for biosolids by Winter 2024 is the specific action highlighted in the PFAS Roadmap for biosolids. However, EPA is committed to considering additional actions, as appropriate, and to updating the public on any future actions the Agency may take, including through an annual public progress report.

18. CERCLA's definition of "release" excludes the normal application of fertilizer. Does EPA consider the application of biosolids on farms a "normal application of fertilizer" that is exempt under CERCLA?

RESPONSE: EPA is evaluating this issue as part of developing a proposed rule to designate PFOA and PFOS as CERCLA hazardous substances. EPA plans to propose a rule in Spring 2022 for public comment, and EPA looks forward to public comments on its proposal.

19. On December 18, 2020, EPA released the Interim Guidance on Destroying and Disposing of Certain PFAS and PFAS-Containing Materials. The Interim Guidance outlines the current state of the science on techniques and treatments, but it does not recommend a particular technique or treatment for destruction or disposal of PFAS and PFAS-containing materials. In the *PFAS Strategic Roadmap,* EPA details plans to update the guidance when sufficient useful information is available, and no later than the statutory deadline of December 2023. If EPA is unable to publish updated guidance on disposal and destruction prior to a potential designation of PFOA and PFOS as CERCLA hazardous substances, how will the Agency direct EPA staff, contractors, and potentially responsible parties to dispose of or destroy material containing PFAS?

RESPONSE: To meet a requirement of the Fiscal Year 2020 National Defense Authorization Act, EPA published interim guidance on destroying and disposing of PFAS and certain identified non-consumer PFAS-containing materials in December 2020 for public comment. It identifies three technologies that are commercially available to either destroy or dispose of PFAS and PFAS-containing materials and outlines the significant uncertainties and information gaps that exist concerning the technologies' ability to destroy or dispose of PFAS while minimizing the migration of PFAS to the environment. The guidance also highlights research that is underway and planned to address some of these information gaps. Furthermore, the interim guidance identifies existing EPA tools, methods, and approaches to characterize and assess the

risks to disproportionately impacted people of color and low-income communities living near likely PFAS destruction or disposal sites.

In the PFAS Roadmap, EPA committed to issuing updated guidance no later than the NDAA statutory deadline of December 2023. EPA's updated guidance will address the public comments and reflect newly published research results. Since the publication of the interim guidance, EPA and other agencies have been conducting relevant research on destruction and disposal technologies. EPA anticipates that additional research data will become available starting in 2022. EPA will update the guidance when sufficient useful information is available and no later than the statutory deadline.

20. EPA's Interim Guidance acknowledges that incineration is currently being used by certain entities to destroy PFAS. What is EPA's position on ongoing incineration of PFAS?

    RESPONSE: In the PFAS Roadmap, EPA committed to issuing updated guidance on destroying and disposing of PFAS and PFAS-containing materials no later than the NDAA statutory deadline of December 2023. EPA's updated guidance will address the public comments and reflect newly published research results. Since the publication of the interim guidance, EPA and other agencies have been reviewing relevant research on destruction and disposal technologies, including incineration. EPA anticipates that additional research data will become available starting in 2022. EPA will update the guidance when sufficient useful information is available and no later than the statutory deadline.

21. In Spring 2020, EPA established the PFAS Innovative Treatment Team (PITT), which was a dedicated, full-time team of multidisciplinary research staff who concentrated their efforts and expertise on disposal and destruction of PFAS-contaminated media and waste. The PITT was a six-month effort. Since disposal and destruction are listed in the objectives of all three of the goals in the *PFAS Strategic Roadmap* (Research, Restrict, and Remediate), does EPA intend to reinstate the PITT in any form to focus on this research?

    RESPONSE: The PITT was a multi-disciplinary research team that worked full-time for 6-months on applying their scientific efforts and expertise to a single problem: disposal and/or destruction of PFAS-contaminated media and waste. While the PITT formally concluded in Fall 2020, and EPA has no plans to formally reinstate the PITT, the research efforts initiated under the PITT continue.

22. In the National PFAS Testing Strategy, EPA identified secondary and tertiary structural categories. Can you provide the dataset showing the number of PFAS in each secondary and tertiary structural category and additional details on the variability within each of the 70 terminal categories of PFAS?

    RESPONSE: As described in the National PFAS Testing Strategy, there are more than 6,000 PFAS arrayed across the 70 nested primary, secondary and tertiary categories. Furthermore, there is a 'distance from centroid' parameter for each of the PFAS.

EPA also notes that as described in the National PFAS Testing Strategy document, the categorization process is iterative and EPA is working to further refine the initial categories using additional data (e.g., mechanistic, toxicokinetic data, degradation, and exposure data). EPA is working to compile and display these lists in a digestible and informative way as part of developing a more technically detailed document describing the categorization procedure and will be prepared to provide the lists when that work is completed.

23. The National PFAS Testing Strategy states that EPA used "the centroids as the conceptual anchor within each terminal category to define a candidate PFAS for testing" and for the 24 terminal categories with an identifiable manufacturer, EPA "will consider the distance from the centroid in selecting PFAS for testing." In selecting PFAS chemicals for test orders, is EPA selecting the closest point to the centroid where the PFAS chemical has an identifiable manufacturer?

    RESPONSE: Yes, when identifying PFAS candidates for testing, EPA selected the chemical closest to the centroid that has an identifiable manufacturer.

24. EPA identified only 24 terminal categories that contained PFAS with an identifiable manufacturer to whom EPA could issue a test order. Do this figure encompass all active manufacturers as well as active PFAS chemicals?

    RESPONSE: No, the 24 terminal categories do not encompass all active manufacturers and active PFAS. The Strategy document – see Section 6 and Figure 6, in particular – describes in detail how EPA identified the initial testing candidates. EPA expects implementation of the Strategy to be an iterative process. In other words, additional phases of testing are expected. In addition, EPA may expand this initial list of candidate PFAS as EPA identifies additional PFAS manufacturers through, for example, reporting under the future TSCA section 8(a)(7) rule.

25. What is the relationship between the categories used to select representative chemicals in EPA's National PFAS Testing Strategy and EPA's cross-program work to identify PFAS categories with an expected completion date of Winter 2021?

    RESPONSE: To accelerate EPA's ability to address PFAS and deliver public health protections sooner, EPA is working to break the large, diverse class of PFAS into smaller categories based on similarities across defined parameters (such as chemical structure, physical and chemical properties, and toxicological properties). This builds upon the work Congress directed under the 2020 National Defense Authorization Act to develop a process for prioritizing which PFAS or classes of PFAS that should be subject to additional research efforts based on potential for human exposure to, toxicity of, and other available information. EPA plans to initially categorize PFAS using two approaches. In the first approach, EPA plans to use toxicity and toxicokinetic data to develop PFAS categories for further hazard assessment and to inform hazard- or risk-based decisions, such as to identify PFAS candidates for testing as in the National PFAS Testing Strategy. In the second approach, EPA plans to develop PFAS categories based

on removal technologies using existing understanding of treatment, remediation, destruction, disposal, control, and mitigation principles. EPA plans to use the PFAS categories developed from these two approaches to identify gaps in coverage from either a hazard assessment or removal technology perspective, which will help EPA prioritize future actions to research, restrict, and remediate PFAS.

26. How does EPA plan to use PFAS categories when developing future regulations and which criteria (e.g. toxicity; chemical composition) will be used to define these categories?

RESPONSE: To accelerate EPA's ability to address PFAS and deliver public health protections sooner, EPA is working to break the large, diverse class of PFAS into smaller categories based on similarities across defined parameters (such as chemical structure, physical and chemical properties, and toxicological properties). EPA plans to initially categorize PFAS using two approaches. In the first approach, EPA plans to use toxicity and toxicokinetic data to develop PFAS categories for further hazard assessment and to inform hazard- or risk-based decisions. In the second approach, EPA plans to develop PFAS categories based on removal technologies using existing understanding of treatment, remediation, destruction, disposal, control, and mitigation principles.

EPA plans to use the PFAS categories developed from these two approaches to identify gaps in coverage from either a hazard assessment or removal technology perspective, which will help EPA prioritize future actions to research, restrict, and remediate PFAS. For example, EPA may choose to prioritize research to characterize the toxicity of PFAS that are not being addressed by regulations that require the implementation of removal technologies. Conversely, EPA may prioritize research to evaluate the efficacy of technologies designed to remove PFAS that are included in a hazard-based category with relatively higher toxicities. To support coordination and integration of information across PFAS categories, EPA plans to develop a PFAS categorization database that will capture key characteristics of individual PFAS, including category assignments.

27. EPA has been conducting Tier 1 high-throughput toxicity testing on around 120 different PFAS chemicals. On March 15, 2021, EPA's website on the Status of EPA Research and Development on PFAS stated that "[l]iterature and laboratory generated-data will be available Q4 2020" and "EPA expects a draft report for internal review in Q4 2020."[1] EPA has since removed that language from this website. Is the literature and laboratory generated-data available? If so, please provide a link. If not, why is this information unavailable for review by Congress and the public?

RESPONSE: EPA is generally releasing results from its PFAS research and development activities through peer-reviewed scientific journals. To date, results from one of the high-throughput toxicity tests that evaluates a subset of important cellular pathways have been published and are available at https://www.sciencedirect.com/science/article/abs/pii/S0300483X21001128. EPA is also

[1] https://web.archive.org/web/20210318065037/https://www.epa.gov/chemical-research/status-epa-research-and-development-pfas

curating existing scientific data on PFAS human health and ecological effects and makes these data available through the CompTox Chemicals Dashboard and the ECOTOX Knowledgebase.

The website referenced in this question contains anticipated internal timelines that EPA uses to track planned research activities, and these timelines are subject to change.

28. What is the status of EPA's Tier 1 toxicity testing of these PFAS compounds and when will EPA release the results?

RESPONSE: EPA's Tier 1 toxicity testing is ongoing and will yield information for prioritizing PFAS chemicals for further testing and to inform possible categorization, as described in the National PFAS Testing Strategy. EPA is generally releasing results from its PFAS research and development activities through peer-reviewed scientific journals.

29. EPA's *PFAS Strategic Roadmap* states that EPA will "[c]lose the door on abandoned PFAS and uses." In this context, can you define "abandoned" and provide details of how EPA intends to "close the door"?

RESPONSE: Many existing chemicals (i.e., those that are already in commerce and listed on the TSCA Inventory of chemicals), including PFAS, are currently not subject to any type of restriction under TSCA. In some instances, the chemicals themselves have not been actively manufactured for many years. In others, chemicals may have in the past been manufactured or processed for certain uses that have been discontinued. Absent restriction, manufacturers are free to begin producing those abandoned chemicals or resume those abandoned uses at any time. Under Section 5(a) of TSCA, by rule, EPA can designate uses of a chemical that are not currently ongoing—and potentially all uses associated with an inactive chemical—as "significant new uses." Doing so ensures that an entity must first submit a notice and certain information to EPA before it can resume manufacturing or processing for those uses. TSCA then requires EPA to review and make an affirmative determination on the potential risks to health and the environment and to require safety measures to address unreasonable risks before allowing the manufacturing or processing to resume. EPA is considering how it can apply this significant new use authority to help address abandoned uses of PFAS as well as future uses of PFAS on the inactive portion of the TSCA Inventory.

30. Did EPA convene a Small Business Advocacy Review panel prior to publishing the TSCA Reporting and Recordkeeping Requirements for PFAS proposed rule?

RESPONSE: At the time the rule was proposed, EPA concluded that this action would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as described in Section VII.C of the proposed rule (86 FR 33926) and therefore did not convene a SBAR panel prior to proposal. EPA is reviewing public comments and conducting internal analyses to determine whether a supplemental proposal and/or an SBAR panel is needed.

31. In vacating the Navigable Waters Protection Rule, EPA and this Administration are interpreting the opinions of just two district court decisions as the "law of the land" and applying nationally. Does EPA plan to apply this same standard to any district court opinion moving forward?

RESPONSE: It would be premature for me to speculate on the content and impacts of hypothetical future judicial decisions.

32. After EPA sent a draft proposal for a new definition of "waters of the United States" to the Office of Management and Budget (OMB) for review, the Agency later announced its plan to initiate regional roundtables on the WOTUS definition. The fact you sent the proposal to OMB before announcing the roundtables suggest they are nothing more than window-dressing because they did not inform your development of the regulatory proposal. In your proposal, are there any substantive changes beyond a simple reinstatement of the pre-2015 definition and updates to be consistent with relevant Supreme Court decisions?

RESPONSE: The agencies have initiated a new rulemaking process that proposes to return to pre-2015 regulations and would re-establish in our regulations the familiar and fundamental protections for waters and wetlands on a long-standing scientific, regulatory, and historical foundation, updated to be consistent with Supreme Court decisions. That proposed rule is now available for public review and comment. The agencies also anticipate developing a second rule that would be informed by further robust stakeholder engagement as well as the experience of implementing the pre-2015 regulations, the 2015 Clean Water Rule, and the 2020 Navigable Waters Protection Rule (NWPR).

33. If there are changes beyond a simple reinstatement of the pre-2015 definition and updates to be consistent with relevant Supreme Court decisions, why did EPA send a proposal to OMB before completing the stakeholder process?

RESPONSE: The agencies have initiated a new rulemaking process that proposes to return to pre-2015 regulations and would re-establish in our regulations the familiar and fundamental protections for waters and wetlands on a long-standing scientific, regulatory, and historical foundation, updated to be consistent with Supreme Court decisions. That proposed rule is now available for public review and comment. The agencies also anticipate developing a second rule that would be informed by further robust stakeholder engagement as well as the experience of implementing the pre-2015 regulations, the 2015 Clean Water Rule, and the 2020 NWPR.

34. What does EPA view as the necessary updates for the pre-2015 regime to be consistent with relevant Supreme Court decisions?

RESPONSE: The agencies have initiated a new rulemaking process that proposes to return to pre-2015 regulations and would re-establish in our regulations the familiar and fundamental protections for waters and wetlands on a long-standing scientific,

regulatory, and historical foundation, updated to be consistent with Supreme Court decisions. That proposed rule is now available for public review and comment. The agencies also anticipate developing a second rule that would be informed by further robust stakeholder engagement as well as the experience of implementing the pre-2015 regulations, the 2015 Clean Water Rule, and the 2020 NWPR.

35. During the hearing, you were asked whether the replacement of the Navigable Waters Protection Rule would be used to "impose new regulatory burdens in the name of climate change." You responded by saying, "[n]o," and that you "are not using the WOTUS role in that way." Will you confirm that climate change will not be evaluated as a factor in determining whether a water is a "navigable water" in EPA's rulemaking to repeal the Navigable Waters Protection Rule?

RESPONSE: As I said during the hearing, EPA is not utilizing the "Waters of the United States" rulemaking to impose regulatory burdens in the name of climate change. The agencies are working expeditiously to move forward with the rulemakings announced on June 9, 2021, in order to better protect our nation's vital water resources that support public health, environmental protection, agricultural activity, and economic growth. The agencies' regulatory effort will be guided by several considerations, including considering the latest peer-reviewed and relevant science, including the science of climate change. The agencies remain committed to crafting a durable definition of "waters of the United States" that is informed by diverse perspectives and based on an inclusive foundation.

36. Will you confirm that climate change will not be evaluated as a factor in determining whether a water is a "navigable water" in EPA's future rulemaking to replace the Navigable Waters Protection Rule following the repeal rulemaking?

RESPONSE: As I said during the hearing, EPA is not utilizing the "Waters of the United States" rulemaking to impose regulatory burdens in the name of climate change. The agencies are working expeditiously to move forward with the rulemakings announced on June 9, 2021, in order to better protect our nation's vital water resources that support public health, environmental protection, agricultural activity, and economic growth. The agencies' regulatory effort will be guided by several considerations, including considering the latest peer-reviewed and relevant science, including the science of climate change. The agencies remain committed to crafting a durable definition of "waters of the United States" that is informed by diverse perspectives and based on an inclusive foundation.

37. During the hearing, you were asked whether you could confirm that EPA would not be removing the exemptions for prior converted crop lands that existed in the Navigable Waters Protection Rule in any future rulemaking, to which you responded with "yes." Will you confirm that EPA will retain the prior converted croplands exemption as it existed in the Navigable Waters Protection Rule in EPA's rulemaking to repeal the Navigable Waters Protection Rule?

RESPONSE: The agencies have initiated a new rulemaking process that proposes to return to pre-2015 regulations and would re-establish in our regulations the familiar and fundamental protections for waters and wetlands on a long-standing scientific, regulatory, and historical foundation, updated to be consistent with Supreme Court decisions. That proposed rule is now available for public review and comment, and the proposed rule includes a proposed exemption for prior converted croplands.

The agencies also anticipate developing a second rule that would be informed by further robust stakeholder engagement as well as the experience of implementing the pre-2015 regulations, the 2015 Clean Water Rule, and the 2020 NWPR. I do not want to prejudge the outcome of either regulatory process; EPA looks forward to ongoing and robust stakeholder engagement as the Agency develops a proposed second rule and takes public comment on both.

38. During the hearing, you confirmed details about EPA's plan to retain the prior converted croplands exemption in the Agency unpublished proposal that was with OMB for interagency review, but when asked about other agriculture-related elements that could be potentially covered in a proposal or subsequent rulemaking, you replied that you "cannot prejudge the outcome of a rulemaking." Can you explain how you did not prejudge the outcome of a rulemaking when you confirmed details about EPA's plan to retain the prior converted croplands exemption in the Agency unpublished proposal?

RESPONSE: The agencies have initiated a new rulemaking process that proposes to return to pre-2015 regulations and would re-establish in our regulations the familiar and fundamental protections for waters and wetlands on a long-standing scientific, regulatory, and historical foundation, updated to be consistent with Supreme Court decisions. That proposed rule is now available for public review and comment, and the proposed rule includes a proposed exemption for prior converted croplands.

The agencies also anticipate developing a second rule that would be informed by further robust stakeholder engagement as well as the experience of implementing the pre-2015 regulations, the 2015 Clean Water Rule, and the 2020 NWPR. I do not want to prejudge the outcome of either regulatory process; EPA looks forward to ongoing and robust stakeholder engagement as the Agency develops a proposed second rule and takes public comment on both.

39. Can you provide details on any other agriculture-related elements that could be potentially covered in a proposal or subsequent rulemaking and all information on why EPA is considering addressing them in this proposal or subsequent rulemaking?

RESPONSE: The agencies have initiated a new rulemaking process that proposes to return to pre-2015 regulations and would re-establish in our regulations the familiar and fundamental protections for waters and wetlands on a long-standing scientific, regulatory, and historical foundation, updated to be consistent with Supreme Court decisions. That proposed rule is now available for public review and comment.

The agencies also anticipate developing a second rule that would be informed by further robust stakeholder engagement as well as the experience of implementing the pre-2015 regulations, the 2015 Clean Water Rule, and the 2020 NWPR. I do not want to prejudge the outcome of either regulatory process; EPA looks forward to ongoing and robust stakeholder engagement as the Agency develops a proposed second rule and takes public comment on both.

40. On the briefing call the Agency provided to Committee staff, EPA staff stated that the initial rulemaking—the repeal of the Navigable Waters Protection Rule—will also seek to incorporate concepts of regionalization. Under the implementation of a "regionalization" element to a rulemaking relating to navigable waters, how would EPA determine the different standards or factors to apply to different areas of the United States, such as those areas that are coastal versus those that are landlocked, or those that are arid versus those that receive more precipitation?

RESPONSE: The agencies have initiated a new rulemaking process that proposes to return to pre-2015 regulations and would re-establish in our regulations the familiar and fundamental protections for waters and wetlands on a long-standing scientific, regulatory, and historical foundation, updated to be consistent with Supreme Court decisions. That proposed rule is now available for public review and comment.

The agencies also anticipate developing a second rule that would be informed by further robust stakeholder engagement as well as the experience of implementing the pre-2015 regulations, the 2015 Clean Water Rule, and the 2020 NWPR. I do not want to prejudge the outcome of either regulatory process; EPA looks forward to ongoing and robust stakeholder engagement as the Agency develops a proposed second rule and takes public comment on both.

41. EPA has detailed that the Office of Water is managing three pilot programs on the implementation of the White House's Justice40 initiative, including the Drinking Water and Clean Water State Revolving Funds and the Water Infrastructure Improvements for the Nation Act (WIIN Act) Grant Programs focused on lead. Can you provide more details on the purpose of the pilot programs and why these three programs were selected?

RESPONSE: The pilot programs identified in the July 20, 2021, "Interim Implementation Guidance for the Justice40 Initiative" will undertake an initial implementation of the Justice40 Interim Implementation Guidance to maximize the benefits that are directed to disadvantaged communities. These pilots are intended to serve as a blueprint for other agencies to help inform their work to implement the Justice40 Initiative across government. The programs listed in the July 20, 2021, memorandum, including EPA's State Revolving Funds and Reducing Lead in Drinking Water grant program, were selected by reviewing White House Environmental Justice Advisory Council recommendations, consulting with the White House Environmental Justice Interagency Council, and reviewing agency responses to information requests about current federal investments in disadvantaged communities.

42. Are there other programs in the Office of Water that are being targeted in further implementation of the Justice40 initiative?

RESPONSE: Justice40 is a whole-of-government effort to ensure that Federal agencies work with states and local communities to make good on President Biden's promise to deliver at least 40 percent of the overall benefits from Federal investments in climate and clean energy to disadvantaged communities. The July 20 interim guidance identifies a number of potentially covered programs, and the Office of Water programs identified above are the only programs specifically included as pilot programs.

43. As part of potential implementation of the Justice40 initiative, does EPA envision changes to the operations of these programs that would impact those who receive funding or impose any restrictions on what grantees could do with potential funding?

RESPONSE: Consistent with the July 20, 2021, interim implementation guidance, EPA is working to undertake an initial implementation of the Justice40 Interim Implementation Guidance to maximize the benefits that are directed to disadvantaged communities. EPA is currently identifying applicable program funding mechanisms, policies, and procedures based on the July 20 interim implementation guidance, and is considering program-specific guidance that provides recommendations for maximizing the benefits of the programs that accrue in disadvantaged communities, as appropriate and consistent with applicable law.

44. During a recent environmental justice stakeholder call, EPA officials stated that as part of the potential implementation of the Justice40 initiative, funds that are revolved back to the states could be subject to any subsequent Justice40 criteria. Can you provide an explanation of what this means or how it would change the implementation of these and potentially other programs at EPA?

RESPONSE: As noted above, EPA is currently identifying applicable program funding mechanisms, policies, and procedures based on the July 20 interim implementation guidance, and is considering program-specific guidance that provides recommendations for maximizing the benefits of the programs that accrue in disadvantaged communities, as appropriate and consistent with applicable law.

45. Does this not change retroactively the agreed understanding under which those federal dollars were previously provided to the states? If not, why not?

RESPONSE: EPA does not expect implementation of the Justice40 initiative to impact any funding that has already been provided to states or other grant recipients. Consistent with the July 20 interim implementation guidance, EPA is taking action in accordance with its existing authorities and consistent with applicable law.

46. I have previously written to EPA on April 27, 2021 and July 29, 2021 requesting a full accounting of how the Agency has expended and plans to expend the $100 million appropriated under section 6002 of H.R. 1319, the "American Rescue Plan" (ARP, Public

Law 117-2). Congress provided four specific statutory authorities under which EPA is authorized to issue grants or conduct activities—which included the Safe Drinking Water Act. EPA has provided an initial, incomplete response to me on June 24, 2021, and then, an additional response on September 14, 2021, but EPA has not provided a detailed allocation plan to the Committee that provides details of all the funding that has been provided using Safe Drinking Water Act authority. Can you provide details on all ARP funding that has been issued using Safe Drinking Water Act authority?

RESPONSE: EPA is committed to maximum transparency with you, your colleagues in Congress, and the American people. We provided detailed information in our two letters, explaining the work the Agency has done to implement the American Jobs Plan, which was signed into law by President Biden on March 11, 2021. Since that time, EPA has developed detailed budget allocations and internal controls required to support implementation. On June 24, we provided you with a summary of the budget amounts by program project, a description of how the EPA plans to use the funds, and the availability of resources. Subsequently, as EPA began to fund proposed projects and request proposals to fund more projects, EPA shared information with the public on June 25 and July 7. On September 14, we provided you with updated version of the Agency's allocation plan, indicating funds that had been obligated since June, as well as the ARP statutory alignment of each allocation. That updated version specified that the program projects authorized at least in part by SDWA section 1442 include: civil enforcement, climate protection program, compliance monitoring, criminal enforcement, drinking water programs, environmental justice, integrated environmental strategies, children and other sensitive populations, and regulatory/economic-management and analysis. Additionally, EPA has since published a website, available at www.epa.gov/arp to provide regular updates and further uphold our commitment to the fullest transparency possible regarding the reporting, tracking, and communication of EPA's use of ARP funds, including the eventual outcomes of these resources in making a difference on the ground for our country's most disproportionately impacted communities.

47. EPA has previously detailed that the Agency "prioritized use of existing grant and contractual vehicles for expenditure of these funds to facilitate the quickest allocation of resources to aid in critical responses to the impacts of the COVID-19 pandemic, which continues to disproportionately impact these communities." Were any of these "existing grant and contractual vehicles" within the Office of Water?

RESPONSE: As explained in our September 14 letter, after President Biden signed the American Rescue Plan in March, EPA developed an allocation plan and internal controls, then allocated resources among the Environmental Programs and Management (EPM) account and State and Tribal Assistance Grants account. Among other program projects in the EPM account, one of the program projects allocated funds is for the Office of Water's drinking water program. These funds will be used to support SDWA section 1442(a) science, research, demonstrations or other section 1442 activities as well as drinking water systems lacking sufficient funds to meet Safe

Drinking Water Standards. These funds will be used to provide financial and managerial training, tribal drinking water compliance, and technical assistance.

Senator Inhofe:

1. Ms. Fox, it's my understanding you are incorporating the supposed impacts of "climate change" into the repeal of the Navigable Waters Protection Rule (NWPR). Will you please elaborate on EPA's plan to incorporate "climate change" into the repeal of the NWPR?

    a. Have you collaborated with any officials in the White House on incorporating "climate change" into the repeal of the NWPR?

    RESPONSE: As I said during the hearing, EPA is not utilizing the "Waters of the United States" rulemaking to impose regulatory burdens in the name of climate change. The agencies are working expeditiously to move forward with the rulemakings announced on June 9, 2021, in order to better protect our nation's vital water resources that support public health, environmental protection, agricultural activity, and economic growth. The agencies' regulatory effort will be guided by several considerations, including considering the latest peer-reviewed and relevant science, including the science of climate change. The agencies remain committed to crafting a durable definition of "waters of the United States" that is informed by diverse perspectives and based on an inclusive foundation.

2. Ms. Fox, farmers and ranchers are determined to keep their land and water clean as that is vital to crop and livestock stability as well as for future generations of farmers and ranchers. As EPA prepares to repeal and replace the NWPR, it is vital that the Agency maintain important agricultural exemptions including for stock ponds, agricultural ditches and prior converted cropland. Will these specific exemptions be maintained?

    a. And to what extent has EPA engaged with agriculture stakeholders so far?

    RESPONSE: The agencies have initiated a new rulemaking process that proposes to return to pre-2015 regulations and would re-establish in our regulations the familiar and fundamental protections for waters and wetlands on a long-standing scientific, regulatory, and historical foundation, updated to be consistent with Supreme Court decisions. That proposed rule is now available for public review and comment.

    The agencies also anticipate developing a second rule that would be informed by further robust stakeholder engagement as well as the experience of implementing the pre-2015 regulations, the 2015 Clean Water Rule, and the 2020 NWPR. I do not want to prejudge the outcome of either regulatory process; EPA looks forward to ongoing and robust stakeholder engagement as the Agency develops a proposed second rule and takes public comment on both.

Section 404(f) of the Clean Water Act contains statutory exemptions for certain agricultural activities which cannot be changed by the proposed rulemakings.

The agencies are committed to hearing from voices across the spectrum when developing a durable regulatory definition on which co-regulators, stakeholders, and communities can rely. As a first step, on July 30, 2021, EPA and the Army announced a series of engagement opportunities, including an opportunity for stakeholders and the public to provide written recommendations and participate in a series of public meetings. In addition, the agencies initiated Federalism and Tribal consultations and hosted a series of dialogues with state and Tribal co-regulators this fall.

The agencies also plan to convene regionally focused and inclusive roundtables. These roundtables will allow a full spectrum of the agencies' partners to engage and discuss their experience with definitions of "waters of the United States"—including what has worked and what has not. The roundtables will provide opportunities to discuss geographic similarities and differences, particular water resources that are characteristic of or unique to each region, and site-specific feedback about implementation. The agencies are interested in hearing from all stakeholders, including communities, states, Tribes, local governments, association groups, small businesses, farmers, and families. EPA recently extended the deadline for roundtable submissions until December 1, 2021.

Senator Shelby:

1. On the briefing call that the EPA provided to EPW committee staff, the agency and the Corps of Engineers stated that step 1- the repeal of the Navigable Waters Protection Rule – will also seek to incorporate concepts of regionalization.

    a. Does this mean that there could be different standards or factors that apply to different areas of the United States, such as those areas that are coastal versus those that are landlocked, or those that are arid versus those that receive more precipitation?

    b. What does this mean for states like my own, where there are a wide range of different climates and ecosystems – does this mean there is a possibility that there could even be different standards that apply in different parts of my state?

    RESPONSE: The agencies have initiated a new rulemaking process that proposes to return to pre-2015 regulations and would re-establish in our regulations the familiar and fundamental protections for waters and wetlands on a long-standing scientific, regulatory, and historical foundation, updated to be consistent with Supreme Court decisions. That proposed rule is now available for public review and comment.

The agencies also anticipate developing a second rule that would be informed by further robust stakeholder engagement as well as the experience of implementing the pre-2015 regulations, the 2015 Clean Water Rule, and the 2020 NWPR. I do not want to prejudge the outcome of either regulatory process; EPA looks forward to ongoing and robust stakeholder engagement as the Agency develops a proposed second rule and takes public comment on both.